

Before the  
**COPYRIGHT ROYALTY JUDGES**  
Washington, DC

*In re*

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR PERFORMANCE OR DISPLAY  
OF NONDRAMATIC MUSICAL WORKS AND  
PICTORIAL, GRAPHIC, AND SCULPTURAL  
WORKS BY PUBLIC BROADCASTING  
ENTITIES (PB IV)**

**Docket No. 21-CRB-0002-PBR  
(2023-2027)**

**PROPOSAL OF AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND  
PUBLISHERS OF RATES AND TERMS FOR COLLEGES AND UNIVERSITIES**

The American Society of Composers, Authors and Publishers (“ASCAP”) hereby submits this proposal for statutory license fees to be paid to ASCAP by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with National Public Radio, Inc. (“NPR”) for the performance of copyrighted musical works in ASCAP’s repertory for the years 2023 through 2027. ASCAP proposes a revised version of 37 C.F.R. § 381.5 which applies to the performance of copyrighted published nondramatic musical compositions in the ASCAP repertory “by noncommercial radio stations which are licensed to colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with NPR”.

**BACKGROUND**

ASCAP licenses, on a non-exclusive basis, the public performing right in millions of copyrighted musical works of its nearly 800,000 songwriter, composer and music publisher members. ASCAP also licenses in the United States the musical works in the repertories of

nearly 100 foreign performing rights organizations through reciprocal agreements with those organizations.

Shortly after the Copyright Revision Act of 1976 became effective (on January 1, 1978), the Copyright Royalty Tribunal (“CRT”) held proceedings for the determination of compulsory license fees to be paid by public broadcasting entities for the performance of copyrighted musical works, pursuant to 17 U.S.C. § 118. Among those public broadcasting entities were noncommercial educational radio stations licensed to colleges or universities that were not members of NPR. *See generally*, 43 Fed. Reg. 25,069 (June 8, 1978). In 1978, the CRT fixed the annual fee to be paid to ASCAP by college radio stations which are not affiliated with NPR (“College Radio Stations”) for their performances of copyrighted musical works in ASCAP’s repertory. *See* 43 Fed. Reg. 25,071, 25,073; 37 C.F.R. §§ 304.5, 304.10 (1978). That CRT determination was effective through December 31, 1982.

In accordance with the 5-year adjustment provision in the statute, in 1982, 1987, 1992, 1997 and 2002, ASCAP and the American Council on Education (“ACE”), the nation’s most visible and influential higher education organization, which represents more than 1,700 colleges and universities, made joint proposals to the CRT and the Librarian of Congress (“Librarian”), to adjust the ASCAP blanket license fees for College Radio Stations. These proposals were adopted by the CRT and the Librarian.<sup>1</sup>

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<sup>1</sup>On December 17, 1993, Congress abolished the CRT. Copyright Royalty Tribunal Reform Act of 1993 (“CRT Reform Act”), Pub. L. No. 103-198, 107 Stat. 2304. Pursuant to the CRT Reform Act, Congress directed the Copyright Office (the “Office”) and the Librarian to adopt the rules and regulations of the CRT found in chapter 3 of 37 C.F.R.; the Office subsequently reissued the CRT regulations on December 22, 1993. 17 U.S.C. § 802(d); 58 Fed. Reg. 67690 (December 22, 1993). The Office also renumbered former 37 C.F.R. § 304.5 (which established terms and rates of license agreements for College Radio Stations) as 37 C.F.R. § 253.5, and renumbered 37 C.F.R. § 304.10 (which calls for annual cost-of-living adjustments to certain rates paid by College Radio Stations) as 37 C.F.R. § 253.10. *See* 59 Fed. Reg. 23964 (May 9, 1994).

On January 9, 2006, the Copyright Royalty Judges (“Judges”), designated by Congress as the successors to the CRT and Librarian of Congress to handle Section 118 royalties, published a notice to set rates for the five-year term from January 1, 2008 through December 31, 2012. *See* 71 Fed. Reg. 1453-1454 (January 9, 2006). ASCAP and ACE submitted a joint proposal to the Judges to continue the royalty fee previously set with annual cost-of-living adjustments in accordance with the Consumer Price Index for the years 2008 through 2012. This proposal was made with the input of the National Association of College and University Business Officers (“NACUBO”), a membership organization that represents more than 1,700 colleges and universities in the United States. Additionally, ASCAP and ACE also proposed that 37 C.F.R. § 253.5 be revised to clarify the scope of the regulation. This proposal was adopted by the Judges on November 30, 2007 (72 Fed. Reg. 67646).

In 2011, ASCAP and ACE, with input and approval from NACUBO, submitted a joint proposal to the Judges, creating a tiered fee system, based on the number of full-time students enrolled, with the exception that the lowest tier fee applicable to any College Radio Stations with fewer than 1,000 full-time enrolled students is also available to any College Radio Station with an authorized effective radiated power (“ERP”) of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population. This proposal was adopted by the Judges on November 29, 2012 (77 Fed. Reg. 71105).

In 2016, ASCAP and NACUBO submitted a joint proposal, supported by ACE, to set rates and terms for College Radio Stations reflecting the same tiered system as in the 2011 ASCAP-ACE joint proposal, with annual cost-of-living adjustments generally in accordance with CPI. This joint proposal was adopted by the Judges on January 19, 2018. *See* 83 Fed. Reg. 2739.

On January 5, 2021, the Judges published a notice in the above-captioned Proceeding to set rates for the five-year term from January 1, 2023 through December 31, 2027. *See* 86 Fed. Reg. 325. ASCAP timely filed a petition to participate in the Proceeding. However, unlike past Section 118 proceedings, no entity or representative of the College Radio Stations submitted a petition to participate in the Proceeding.

### THE ASCAP PROPOSAL

ASCAP hereby proposes ASCAP blanket license fees for the covered College Radio Stations for the five year period 2023 through 2027, continuing the tiered approach in 37 C.F.R. § 381.5(c)(1)(i). A chart of the proposed rates embodying the ASCAP proposal is attached hereto as Appendix A. No revisions to the text of the governing regulation, *i.e.*, 37 C.F.R. § 381.5, are proposed<sup>2</sup>; except that the rates for each year during the five-year period are increased for an annual cost-of-living adjustment, based on CPI, reflecting the annual increases adopted in 2006, 2011 and 2016.

As noted above, no entity or representative for the College Radio Stations submitted a petition to participate in this Proceeding. However, ASCAP has shared the proposed rates attached hereto as Appendix A with NACUBO and ACE, and NACUBO supports the Proposal stating: “NACUBO holds a position that royalty rate escalations limited to an annual consumer price index-based adjustment is a reasonable approach to updating 37 C.F.R. §381.5.”<sup>3</sup>

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<sup>2</sup> For example, ASCAP proposes that 37 C.F.R. § 381.5(c)(1)(ii) remain unchanged, thus providing that the lowest tier fee applicable to any College Radio Stations with fewer than 1,000 full-time enrolled students is also available to any College Radio Station with an authorized effective radiated power of 100 Watts or less, regardless of the size of the student population.

<sup>3</sup> E-mail dated June 10, 2021 from Bryan Dickson, NACUBO Director, Student Financial Services and Educational Programs to Sam Mosenkis. ACE has not voiced any objection to the proposal.

ASCAP proposes these fees as the ASCAP license fees for all College Radio Stations, which the Judges may adopt and incorporate within 37 C.F.R. § 381.5. Such adoption in the regulations would make further proceedings, including discovery, filing of Written Direct Statements and hearings, unnecessary for College Radio Stations insofar as their performance of ASCAP music is concerned.

The Judges have statutory authority “to make determinations and adjustments of reasonable terms and rates of royalty payments” for the Section 118 license pursuant to 17 U.S.C. § 801(b)(1). ASCAP has no objection to the proposed changes to 37 C.F.R. § 381.5 being printed and made available to the public in the form of a Federal Register notice.

#### CONCLUSION

ASCAP respectfully requests that the Judges adopt this joint proposal for a modification of fees to be paid by College Radio Stations pursuant to Section 118 of the Copyright Act. ASCAP respectfully requests that 37 C.F.R. § 381.5 be amended with the new rates set forth in Appendix A of this Proposal.

Respectfully submitted,

#### **AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS**

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**APPENDIX A**

	<b>Number of full-time students</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
<b>Level 1</b>	<1,000	\$390	\$400	\$410	\$421	\$432
<b>Level 2</b>	1,000-4,999	\$451	\$463	\$475	\$487	\$500
<b>Level 3</b>	5,000-9,999	\$619	\$635	\$652	\$669	\$686
<b>Level 4</b>	10,000-19,999	\$801	\$822	\$843	\$865	\$887
<b>Level 5</b>	20,000+	\$1,009	\$1,035	\$1,062	\$1,090	\$1,118

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of July, 2021, a copy of the foregoing Proposal of American Society of Composers, Authors and Publishers of Rates and Terms for Colleges and Universities was filed electronically using eCRB, which will automatically provide electronic service copies to all counsel and pro se participants who are registered to use eCRB. See 37 C.F.R. § 303.6(h)(1).

/s/ Samuel Mosenkis  
Samuel Mosenkis

# Proof of Delivery

I hereby certify that on Friday, July 02, 2021, I provided a true and correct copy of the PROPOSAL OF AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS OF RATES AND TERMS FOR COLLEGES AND UNIVERSITIES to the following:

Broadcast Music, Inc., represented by Jennifer T. Criss, served via ESERVICE at [jennifer.criss@faegredrinker.com](mailto:jennifer.criss@faegredrinker.com)

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at [john@beiterlaw.com](mailto:john@beiterlaw.com)

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via ESERVICE at [cheshirerigler@shrumhicks.com](mailto:cheshirerigler@shrumhicks.com)

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at [scott@oandzlaw.com](mailto:scott@oandzlaw.com)

Powell, David, represented by David Powell, served via ESERVICE at [davidpowell008@yahoo.com](mailto:davidpowell008@yahoo.com)

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via ESERVICE at [ablin@fhhlaw.com](mailto:ablin@fhhlaw.com)

Educational Media Foundation, represented by David Oxenford, served via ESERVICE at [doxenford@wbklaw.com](mailto:doxenford@wbklaw.com)

Public Broadcasting Entities, represented by David P Mattern, served via ESERVICE at [dmattern@kslaw.com](mailto:dmattern@kslaw.com)

The Harry Fox Agency LLC, represented by John C. Beiter, served via ESERVICE at [john@beiterlaw.com](mailto:john@beiterlaw.com)

Signed: /s/ Sam Mosenkis